

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BROTHERS GAS AND FOOD,

Plaintiff/Counter-Defendant,

Case No. 13-cv-13061

v.

HONORABLE STEPHEN J. MURPHY, III

CATLIN SPECIALTY INSURANCE
COMPANY,

Defendant/Counter-Plaintiff.

**ORDER ADOPTING
REPORT AND RECOMMENDATION**
(document no. 23), **DENYING CATLIN'S
MOTION FOR DEFAULT JUDGMENT** (document no. 8),
**DENYING CATLIN'S MOTION TO STRIKE BROTHERS' ANSWER
TO COUNTERCLAIM** (document no. 12), **AND GRANTING BROTHERS'
MOTION FOR ORDER ALLOWING FILING OF ANSWER** (document no. 17)

Plaintiff/Counter-Defendant Brothers Gas and Food ("Brothers") filed suit against Defendant/Counter-Plaintiff Catlin Speciality Insurance Company ("Catlin") in Wayne County Circuit Court for breach of contract and "breach of statutory duties," alleging that Catlin failed to properly pay an insurance claim arising out of a fire and theft that occurred at Brothers' premises in Detroit. Catlin filed a timely notice of removal to this Court. Catlin then filed an answer to the complaint and a counterclaim for declaratory judgment.

When Brothers did not timely file an answer to Catlin's counterclaim, Catlin obtained a default against Brothers from the Clerk of the Court. After Brothers did not subsequently respond, Catlin filed a motion for default judgment. Instead of filing a timely response, Brothers filed an answer to the counterclaim, more than three months late, without any explanation for the delay or request for leave of the Court to do so. Catlin filed a motion to strike the answer to the counterclaim. Instead of filing a response to the motion to strike,

Brothers moved for permission to file its answer. Brothers also responded to the motion for default judgment.

The Court referred the Motion for Default Judgement, ECF No. 8, the Motion to Strike Brothers' Answer to the Counterclaim, ECF No. 12, and Brothers' Motion for an Order Allowing the Filing of an Answer, ECF No. 17, to Magistrate Judge Grand for a hearing and determination. A hearing was held on these motions on December 18, 2013. On December 18, 2013, the Magistrate Judge issued a Report and Recommendation ("Report"). The Magistrate Judge treated Brothers' filing of an answer as a motion to set aside entry of a default. The Magistrate Judge determined that a default judgment against Brothers was not warranted and the Clerk's entry of default should be set aside. Accordingly, the Magistrate Judge recommended that the Motion for Default and Motion to Strike the Answer to the Counterclaim be denied. The Magistrate Judge also recommended that the Motion for an Order Allowing the Filing of an Answer be granted.¹

Civil Rule 72(b) governs review of a magistrate judge's report and recommendation. De novo review of the magistrate judge's findings is only required if the parties "serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2). Nevertheless, because a district judge always retains jurisdiction over a motion after referring it to a magistrate judge, he is entitled to review the magistrate judge's findings of fact and conclusions of law on his own initiative. See *Thomas v. Arn*, 474 U.S. 140, 154 (1985) (clarifying that while a district court judge need not review a report and recommendation "de novo if no objections are filed, it does not preclude further review by

¹ In addition, the Magistrate Judge ordered that Catlin was entitled to recover the reasonable costs and fees it incurred in connection with obtaining the Clerk's entry of default and preparing its motion for default judgment.

the district judge, sua sponte or at the request of a party, under a de novo or any other standard”).

Because neither party filed objections to the Report, de novo review of the Report's conclusions is not required. Having reviewed the Report's analysis, in light of the record, the Court finds that its conclusions are factually based and legally sound. Accordingly, it will adopt the Report's findings, deny the motion for default judgment, deny the motion to strike the answer to the counterclaim, and grant the motion allowing filing of an answer.

ORDER

WHEREFORE, it is hereby **ORDERED** that the Report and Recommendation (document no. 23) is **ADOPTED**.

IT IS FURTHER ORDERED that Catlin's Motion for Default Judgment (document no. 8) is **DENIED**.

IT IS FURTHER ORDERED that the **CLERK'S ENTRY OF DEFAULT** (document no. 6) is **SET ASIDE**.

IT IS FURTHER ORDERED that Catlin's Motion to Strike Brothers' Answer to the Counterclaim (document no. 12) is **DENIED**.

IT IS FURTHER ORDERED that Brothers' Motion for Order Allowing Filing of Answer (document no. 17) is **GRANTED**. Brothers' Answer to Counterclaim (document no. 11) is **ACCEPTED AS FILED**.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: January 10, 2014

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on January 10, 2014, by electronic and/or ordinary mail.

s/Carol Cohron

Case Manager